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November 2, 2017

A. Gregory Grimsal
Special Master
Gordon, Arata, McCollum,
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VIA E-MAIL & U.S. MAIL

Re: **The State of Texas's Request that the State of New Mexico Answer Its Complaint in *Texas v. New Mexico & Colorado*, No. 141, Original, Prior to Oral Argument on Exceptions to the Special Master's First Interim Report**

Dear Special Master Grimsal,

The State of New Mexico respectfully submits this letter to respond to the issues raised in the State of Texas's letter dated October 23, 2017. Texas's letter requests that you order New Mexico and Colorado to answer Texas's Complaint and raise any counterclaims against Texas within 30 days, prior to oral argument and resolution of the United States' exception and Colorado's first exception to the First Interim Report of the Special Master. New Mexico understands Texas to justify its request on the grounds that doing so will allow Texas to review and respond to any counterclaims New Mexico may raise and will assist in moving this case to issue and trial.

New Mexico respectfully disagrees that granting Texas's request will have any beneficial effect on case efficiency. The United States is a party plaintiff in these proceedings, and the exceptions regarding the scope of its claims remain before the Court. It is, therefore, impossible for New Mexico and Colorado to answer the United States' Complaint in Intervention and file any counterclaims against the United States until the Court clarifies the United States' proper role in this case. Because all parties will have to wait for the Court's resolution of the pending exceptions before New Mexico and Colorado can answer the United States' Complaint in Intervention, no time will be saved by requiring New Mexico and Colorado to separately answer Texas's Complaint now. Discovery, too, must await action from the Supreme Court, as you previously recognized.

See First Interim Report at 4 (explaining that the Court's treatment of the issues raised by New Mexico's motion to dismiss Texas's and the United States' complaints "will immediately shape the scope of discovery moving forward").

Second, the Court is set to hear oral argument in due course on the exceptions of Colorado and the United States to your recommendations on New Mexico's motion to dismiss the United States' Complaint in Intervention. The Court's opinion is likely to provide meaningful guidance on the Compact and the role of the parties, and may affect all subsequent proceedings, including New Mexico's and Colorado's answers and counterclaims to the closely related complaints of Texas and the United States. Although the Court has not yet scheduled a date for oral argument, New Mexico has been advised by the Supreme Court Clerk's Office that this case will most likely be set for argument in early January, 2018. If this is the case, waiting for the Court to resolve questions regarding the United States' role in the case will not cause significant delay and would not justify requiring New Mexico and Colorado to prematurely file answers and counterclaims on Texas's Complaint on a separate track.

Third, the Court's order denying New Mexico's Motion to Dismiss did not remand or recommit the matter to you, as the Court has done in other cases where it has denied exceptions to a special master's report without submitting them to oral argument. See, e.g., Docket, *Montana v. Wyoming*, No. 137, Original (October 12, 2010) (ordering, "The first exception to the Special Master's First Interim Report is set for oral argument in due course. The second exception is recommitted to the Special Master."); see also Docket, *Kansas v. Nebraska*, No. 126, Original (June 29, 2000) (ordering, "Motion of Nebraska to dismiss DENIED, and case recommitted to the Special Master for further proceedings.") and *Kansas v. Colorado*, 514 U.S. 673, 694 (1995) (remanding the case to the special master after resolution of exceptions for "determination of the unresolved issues in a manner not inconsistent with this opinion"). Here, the Court's order stated, "New Mexico's motion to dismiss Texas's complaint is DENIED," but it did not recommit the case to the Special Master. Instead, the Court ordered oral argument on the United States' and Colorado's exceptions. Until the Court rules on the United States' and Colorado's exceptions, resolves all matters pending before it, and recommits the case to you, further proceedings should not occur before the Special Master.

Texas's request is, in essence, an attempt to bifurcate these proceedings, which will generate confusion on deadlines, case management orders, and discovery, without materially advancing the case as a practical matter. Therefore, New Mexico respectfully requests that you deny Texas's request for an order directing New Mexico and Colorado to answer Texas's Complaint and file any counterclaims in 30 days. This case must proceed with all parties and with unified deadlines.

New Mexico, however, agrees with Texas's suggestion that the parties should confer on a Case Management Plan ("CMP"). Although the parties will be unable to finalize the CMP before receiving the Court's opinion on the United States' role in this case, working now to develop a CMP will help ensure the case can proceed expeditiously once the Court's opinion is issued.

A. Gregory Grimsal
Special Master
November 2, 2017
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Thank you for your consideration. We look forward to discussing these issues with you further at an upcoming Status Conference.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read 'M. Rael, Jr.', with a stylized flourish at the end.

Marcus J. Rael, Jr.

MJR/dar
cc: Service List

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